

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP2902

Cir. Ct. No. 2011CV4619

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BOARD OF REGENTS - UW SYSTEM,

PETITIONER-RESPONDENT,

V.

JEFFREY S. DECKER,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
JOHN W. MARKSON, Judge. *Reversed.*

Before Higginbotham, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Jeffrey Decker appeals an order of the circuit court granting the Board of Regents – UW System’s request for a harassment

injunction against him under WIS. STAT. § 813.125 (2009-10).¹ Decker raises numerous procedural and evidentiary challenges to the order. We conclude that the evidence was insufficient to support the court's finding that his conduct constituted harassment under § 813.125 and therefore reverse.

BACKGROUND

¶2 In October 2011, the Board of Regents filed a petition for a temporary restraining order and harassment injunction against Decker, a former student of the University of Wisconsin – Stevens Point (UW-SP), under WIS. STAT. § 813.125. The Board of Regents alleged that:

- During various meetings with the UW-SP Chancellor, Decker “became agitated, began raising his voice and ranting and raving about UW[-]SP employees in a derogatory manner,” “threatened to ‘fuck up’ the Chancellor’s upcoming state of the university address and donor function,” attempted to grab at documents located on the chancellor’s conference table, and forcibly stabbed those documents with a pen.
- Decker was suspended from UW-SP from November 19, 2010, through January 1, 2012.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

- Contrary to the terms of his suspension and the WISCONSIN ADMINISTRATIVE CODE,² in January 2011, Decker trespassed on the University of Wisconsin – Oshkosh campus and distributed written materials at an intercollegiate basketball game.
- Contrary to the terms of his suspension and the administrative code, on September 1, 2011, Decker trespassed into a non-public meeting held at the University of Wisconsin – Fox Valley campus, where he was disruptive, refused to leave, and was “forcibly remove[d]” by police officers.
- Contrary to the terms of his suspension and the administrative code, on September 8, 2011, Decker trespassed into a meeting of the Board of Regents held in Madison, when he videotaped and photographed the meeting, blocked the views of other members of the public, and refused to leave. Decker was placed under arrest, at which point he “went limp forcing officers to carry/drag him from the meeting” and he “attempted to hook his feet onto the legs of chairs in an attempt to resist and obstruct the officers.”
- Contrary to the terms of his suspension and the administrative code, on September 19, 2011, Decker trespassed into a meeting of the University of Wisconsin – Fox Valley Board of Trustees held at the Fox Valley campus where he “repeatedly refused” to leave and “became belligerent and

² WISCONSIN ADMIN. CODE § UWS 17.17(4) (August 2009) provides that any person who is suspended from the university “may not be present on any campus without the written consent of the chief administrative officer of that campus.” WISCONSIN ADMIN. CODE § UWS 18.11(7)(a) (August 2009) provides that no person who is suspended from the university under § UWS 17 “may enter the university lands of any institution without the written consent of the chief administrative officer.”

disruptive.” When police officers attempted to remove Decker from the meeting, he “went limp in an attempt to resist and obstruct the officers,” forcing officers to “drag” him from the meeting. Decker later returned to the campus, but left before police could be contacted.

¶3 On October 24, 2011, the court entered an injunction against Decker effective until October 24, 2015. The court found that “[t]here [were] reasonable grounds to believe that [Decker] ha[d] engaged in harassment with intent to harass or intimidate the [Board of Regents].” The court ordered that Decker cease or avoid harassment of the Board of Regents, avoid any premises temporarily occupied by the Board of Regents, and refrain from contacting the Board of Regents unless the Board consents in writing. The court further found that there was clear and convincing evidence that Decker, who has access to five firearms, “may use a firearm to cause physical harm to another or to endanger public safety,” and the court ordered that Decker be prohibited from possessing any firearms during the pendency of the injunction and surrender any firearms he owned or possessed to the county sheriff’s department.

¶4 Decker appeals.

DISCUSSION

¶5 Decker challenges the circuit court’s decision to grant the Board of Regents’ petition for a harassment injunction. He makes seven arguments on appeal. First, he argues that WIS. STAT. § 813.125, which authorizes injunction orders in the event of harassment, is not an available remedy to the Board of Regents. Second, he argues that the circuit court lacked personal jurisdiction over him. Third, he argues that the circuit court erred in denying his request for a continuance. Fourth, he claims the circuit court erred in issuing the injunction for

a period of forty-eight months. Fifth, he argues that the evidence was not sufficient to support a determination that he engaged in harassing behavior, contrary to § 813.125. Sixth, he argues that the firearm restriction was not supported by the evidence. And seventh, he argues that the court lacked authority to enjoin him from contacting officials and from organizing protests.

¶6 Our review of a circuit court’s decision to grant a harassment injunction is for an erroneous exercise of discretion. *See Welytok v. Ziolkowki*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. “We may not overturn a discretionary determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law.” *Id.*, ¶24. We will uphold the court’s factual findings unless clearly erroneous, but independently review whether the party seeking an injunction has met the required burden of proof and whether the case meets the criteria for an injunction. *Id.*, ¶23.

¶7 To grant an injunction under WIS. STAT. § 813.125(4)(a), the circuit court must find “reasonable grounds to believe” that the person has engaged in harassment with the intent to harass or intimidate the petitioner. Section 813.125(4)(a)3.; *see also Welytok*, 312 Wis. 2d 435, ¶23. “Harassment” is defined under § 813.125(1)(b) as “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” Thus, the party seeking the injunction must prove: (1) that the defendant intentionally engaged in a course of conduct which harassed the victim; and (2) that the defendant’s conduct served no legitimate purpose. *See* § 813.125(4)(a).

¶8 We agree with Decker that the evidence did not establish that he engaged in harassing behavior contrary to WIS. STAT. § 813.125, and therefore

reverse the harassment injunction. Because our decision on this issue is dispositive, we do not reach Decker's remaining arguments. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, we need not reach other issues raised).

¶9 The circuit court determined that Decker had intentionally engaged in conduct that harassed the Board of Regents and that his conduct was “not ... for any lawful or legitimate purpose.” The court identified the following acts in support of its finding: Decker was present on UW campuses “on several occasions” without consent, contrary to the terms of Decker's suspension which provided that Decker “may not enroll in any UW system institution and may not be present on any campus without the written consent of the chief administrator of that campus”; individuals complained about Decker's presence at the three meetings held in September on University of Wisconsin property, which are identified above in paragraph 2; and when law enforcement officers attempted to remove Decker from the September meetings, he resisted by going limp, which “required [officers] to physically take him in hand and escort him out,” and hooking his feet on chairs.

¶10 Decker argues that the evidence does not support the court's determination that his conduct constituted harassment or that his conduct lacked a legitimate purpose. We assume, without deciding, that Decker engaged in a course of conduct that constituted harassment. However, upon our review of the record, we agree with Decker that the record does not support a determination that his conduct lacked a legitimate purpose.

¶11 The supreme court has characterized acts or conduct not done for a legitimate purpose as those “done for the purpose of harassing or intimidating,

rather than for a purpose that is protected or permitted by law.” *Bachowski v. Salamone*, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987).

¶12 The record reflects that Decker believes that segregated fees charged to students by UW-SP and UW-SP’s usage of those fees is not legal, and that he has engaged in public protest activities relating to those issues, including the dissemination of written materials expressing his views and the public expression of those views to university officials, since at least 2010. The record further reflects that the conduct at issue here, including his presence at the September 2011 meetings, was related to his public protest of those issues as well as a protest of what he perceives to be illegal or unauthorized actions by UW-SP administrators toward UW-SP students and him.

¶13 Both the United States Constitution and the Wisconsin Constitution guarantee a person’s right to publicly demonstrate, protest and persuade others as to the rightfulness of his or her viewpoint. U.S. CONST. amend. I; WIS. CONST. art. I, §§ 3 and 4. Because the legitimate protest of government policies is protected by law, we conclude that the record does not support the circuit court’s determination that Decker’s actions, which were taken in protest to UW-SP policies and actions, lacked a legitimate purpose. Accordingly, we reverse the harassment injunction.

By the Court.—Order reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

